IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

Crl.MC.No. 737 of 2007()

CC.919/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

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PETITIONER: ACCUSED

NAJMUDIN, S/O KOYAKUTTY,
THEVAR PARAMBIL, KANJIPURA.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS: STATE & CW1

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. MAIMOONA, D/O ABDU,
PANICKAVEETTIL,
THIRUVEGAPPURA PANCHAYAT.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER
ADV.SMT.P.A.ANITHA FOR R2

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.737 of 2007

Dated this the 21st day of March 2007

O R D E R

The petitioner is the accused in a prosecution under Sections 452, 354 and 427 I.P.C. The crux of the allegations against him is that he had committed the said offence against the second respondent herein, who is the tenant of his father-in-law. There was a dispute regarding the occupation of the said house and it is alleged that in pursuance of that dispute, the petitioner had indulged in the alleged offence on 23/10/2003 at 11 a.m. Crime was registered and investigation was conducted by the police. Final report has been filed alleging commission of the offences under Section 452, 354 and 427 I.P.C.

2. The petitioner has come to this court with the prayer that the powers under Section 482 Cr.P.C may be invoked and the proceedings against the petitioner may be quashed. What are the reasons? The learned counsel for the petitioner submits that the dispute regarding possession of the house has now been settled and the parties have harmoniously come to terms. In these circumstances, the continuation of the proceedings would

work out prejudice, hardship and undeserved trauma. The offences punishable under Sections 354 and 427 I.P.C are compoundable. The offences under Section 452 I.P.C is not compoundable. But notwithstanding the fact that it is not compoundable, the court may take into consideration the fact that all other offences have been legally compounded and that the parties have harmoniously settled all their disputes. The second respondent has entered appearance through counsel. She has filed an affidavit also to confirm that the matter has been settled. I find no reason not to accept the same. The learned counsel for the second respondent vouches the signature of the second respondent in the application.

3. Reliance is placed on the decision in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386] as also the decision of this court in Rajan v. Little House Marketing Pvt.Ltd [2005(4) KLT 595]. As was held in Rajan v. Little House Marketing Pvt.Ltd [2005(4) KLT 595], the decision in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386] cannot be held to obliterate the distinction between compoundable and non-compoundable offences in the matter of acceptance of composition. The mere fact that non-

compoundable offence has been compounded by the victim by itself is no reason for this court to invoke the powers under Section 482 Cr.P.C. The fact that non-compoundable offences under Section 320 Cr.P.C has been compounded by the second respondent cannot, in these circumstances, clinch the issue.

4. The learned counsel for the petitioner as also the learned counsel for the second respondent pray that this court may take a humane and compassionate view in permitting the parties to see the end of an unnecessary litigation. The learned counsel for the petitioner points out that even if the entire allegations were accepted, no offence under Section 452 I.P.C is revealed and at worst only the compoundable offence punishable under Section 451 I.P.C alone is made out. The preparation for causing hurt, assault etc. is the crucial distinction between the offences punishable under Section 451 and 452 I.P.C and in the facts and circumstances of this case, I take note of the fact that there is not even an allegation that the accused was armed with any weapons or articles which would reveal an intention or preparation to cause hurt or assault. I am, in these circumstances, satisfied that in the facts and

circumstances of this case, this can be reckoned as an exceptional case where this court would be justified in invoking the powers under Section 482 Cr.P.C to quash the proceedings against the petitioner.

5. In the result this Criminal Miscellaneous Case is allowed. Proceedings in C.C.No.919/2005 before the J.F.C.M Court, Tirur against the petitioner is hereby quashed.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006